



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

EXECUTIVE/ADMINISTRATIVE COMMITTEE

(Board Chairman Curt Pringle, Member Quentin Kopp, and Member Fran Florez)

November 4, 2009

State Capitol, Senate Hearing Room 2040

Sacramento, CA 95814

2-3 p.m.

Agenda Items

Responsible Party

Status

- | | | |
|--|-------------------------------------|---|
| 1. Board Policies and Procedures
<i>Chairman will present for consideration additional policies and procedures to complement and expand on those adopted by the Board at previous meetings.</i> | Chairman Pringle | A |
| 2. Organizational Plan Adoption and Next Steps
<i>Discussion of the draft organizational plan prepared by KPMG and presented to the board at the October 1, 2009 workshop. The Committee may take action on this item in order to bring a recommendation to the full Board.</i> | Mehdi Morshed | A |
| 3. Authority Budget Discussion
<i>Staff will provide the committee with an overview of the Authority's operating and program budget.</i> | Mehdi Morshed,
Carrie Pourvahidi | A |

"A" denotes an "Action" item; "I" denotes an "Information" item - Items may be taken out of order

Reasonable Accommodation for Any Individual with a Disability

Any individual with a disability who requires reasonable accommodation to attend or participate may request assistance by contacting the Authority at (916) 324-1541. Requests for additional accommodations for the disabled, signers, assistive listening devices, or translators should be made no later than one week prior to the meeting.

Curt Pringle, Chairman
Tom Umberg, Vice-Chair
Russell Burns
David Crane
Rod Diridon, Sr.*
Fran Florez*
Richard Katz
Judge Quentin L. Kopp*
Lynn Schenk
*past chair

ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

TO: CHSRA Board Members

FROM: Mehdi Morshed, Executive Director

DATE: October 30, 2009

SUBJECT: Organization Plan

Over the past ten years the Authority's limited staff members have managed to oversee all the activities related to the planning and environmental work for a state high-speed train. During those years the amount of contract work has varied from less than \$1 million to \$14 million annually, while the number of full-time-equivalent state positions has grown only from 5 to 11.5 over the course of a decade (see annual budget and personnel years in the figure below).

FY	Total Budget	PY's	Notes
1997/98	1,500,000	3	
1998/99	3,000,000	4.5	
1999/00	3,032,000	5	
2000/01	6,026,000	4.5	
2001/02	4,038,000	4	
2002/03	7,928,000	4	
2003/04	3,802,000	4	
2004/05	1,151,000	3.5	
2005/06	3,646,000	3.5	
2006/07	14,553,000	6.5	
2007/08	20,694,000	6.5	
2008/09	44,231,000	9.5	
2009/10	139,180,000	11.5	9.5 PYs currently filled
Total	252,781,000		

With the passage of the \$9.95 billion bond measure last November, the mission and the objective of the Authority, its staff and contractors changed significantly. The promise of federal American Recovery and Reinvestment Act (ARRA) funds additionally has changed our mandate. Put simply, we are now building a high-speed train system, not just building the hopes of one. Instead of the gradual and intermittent planning and environmental studies to match limited funds, the Authority must now proceed toward construction and operation and do it as quickly as possible. With that in mind, it is important to note that every month that passes adds hundreds of millions of dollars to the project; and with a limited amount of bond funds that are not indexed to inflation, delay would significantly diminish the chances of completing the project as planned.

The potential availability of federal ARRA funds adds more urgency and underscores the need for a plan to move toward construction.

Earlier this year I informed the Board that the Authority does not currently have the necessary staff that is needed moving forward to properly direct and oversee the work of our contractors in a manner that will preserve the intent of the project and protect public funds. Our budget request for the current fiscal year included additional staff positions; however, that request was rejected by the Department of Finance because at the time the request was required to be made – last September – the bond measure had not passed. Our budget for this year, which provides \$139 million for contract work, provided only two additional staff positions.

The work of the Authority is accelerating very rapidly and the amount of contract work has expanded geometrically. Yet, the Authority staff has not yet been augmented to handle the level of work that has to be performed.

In order to systematically determine the personnel demand for the future activities of the Authority, we entered into a contract with the firm of KPMG to evaluate the current activities, the future needs, and the kind of organization and personnel that are necessary to carry out the required work. The Authority has received the report and will be acting on it. At this time we, do not have the authority to hire the people we need nor the ability to pay them salaries commensurate with the scope and importance of the work they will need to do.

With the potential of receiving billions of dollars in federal funds, and a very tight schedule for completing the work, we are faced with the monumental task for which we are not properly staffed. As the volume of work expands the potential for improper activities and/or inadequate performance by the contractor expands, increasing the risk that public funds may be misused. As I indicated to you in my memo earlier this year, I am now faced with the following options: slow down the work to match the staff's ability to manage it, or proceed expeditiously and take the risk that is inherent in inadequate management and oversight.

Currently we are extremely short of necessary staff to perform the following tasks:

- Provide policy direction and manage the work of the contractors
- Respond to numerous external requests and demands
- Respond to the Department of Finance and other state agencies requiring proper analytical work in support of our budget
- Administer the contractors and invoices
- Internal audit and risk management

The KPMG report is a good guideline on the kind of organizational structure that is necessary to implement the mission and objectives of the Legislature and the Governor who placed the proposal before the voters, the voters who approved it, and the Authority. The Authority needs to have an action plan for assembling the necessary staff to match the urgent need.

While the action plan is being prepared and implemented, contractors are very busy with numerous activities. Therefore the Authority Board should instruct the staff to either proceed with the work recognizing the risks or slow down the work to match the ability to manage.

Subject: Legal Services

Legal services have been and are provided to the Authority primarily by the Attorney General's office. This memorandum discusses the development of the legal services delivery structure and how those services are currently provided. It includes a brief discussion of how the current legal team evolved, the areas of responsibility of the members of the legal team, the role of outside counsel, a listing of the litigation in which the Authority has been involved, and a sketch of the pertinent work experience and expertise of each of the attorneys who provide significant amounts of legal services to the Authority.

History of Legal Services as Provided to the Authority

When the Authority became organized in the Fall of 1997, the Attorney General's office assigned George Spanos of the Business and Tax Section to provide legal services and to arrange for assistance from additional attorneys when necessary. These arrangements have included obtaining assistance from attorneys in other sections of the Attorney General's office, such as the Government Law Section, the Environmental Law Section, and the Land Law Section.

In 2000, as the Authority prepared to begin the state-wide environmental review process, Christine Sproul, a member of the Land Law Section, was brought onto the legal team. Later, when the prospect of environmental law litigation became imminent, and also in order to deal with an increased need for legal services in connection with the environmental review process, Danae Aitchison, also with the Land Law Section, joined the team.

In 2008, when the need for bond law expertise became apparent, Stepan Haytayan became part of the team. Mr. Haytayan is a member of the Government Law Section.

More recently, in order to obtain services focused on right-of-way acquisition, the Authority obtained the services of Rich Williams, a retired annuitant formerly with Caltrans.

In addition to public agency attorneys, from time to time outside counsel have been retained to provide services outside of the areas of expertise of the Attorney General's office. Hiring outside counsel requires the Attorney General's approval. The preparation of requests for such approval has been the responsibility of Mr. Spanos.

Current Legal Service Responsibilities

George Spanos:

- Responsible for providing legal services for issues involving all areas of law, other than those for which others are designated.
- Responsible for identifying attorneys who can provide needed services and arranging for their participation in the work of the Authority.
- Responsible for coordinating legal services.
- Primarily responsible for all litigation involving the Authority, except for environmental law cases, and for providing supporting services in the case of environmental litigation. Assigned attorney on the Peterson case.

Christine Sproul:

- Responsible for providing and coordinating legal services involving the Authority's environmental review processes; review and comment on all aspects of the Authority's preparation of program and project-specific EIR/EISs.
- Responsible for handling environmental law litigation, along with Danae Aitchison. Member of the litigation team responsible for the Atherton case.

Danae Aitchison:

- Responsible for handling environmental law litigation, along with Christine Sproul. Lead attorney on the Atherton case.
- Responsible for providing legal services involving the Authority's environmental review processes; review and comment on all aspects of the Authority's preparation of program and project-specific EIR/EISs.

Stepan Haytayan:

- Responsible for providing assistance with regard to bond law issues and financing issues.
- Responsible for providing oversight over outside counsel, with regard to financing and bond law issues.

Rich Williams:

- Responsible for providing assistance with regard to right of way issues and with regard to the development of a Right of Way Plan, including the preparation of materials informing the public of the right-of-way acquisition process.

Outside Counsel

The Attorney General has authorized the Authority to obtain the services of outside counsel to obtain legal services as follows: (1) advice on public-private partnerships and (2) advice and assistance with regard to federal railroad regulations, including rules of particular applicability, and federal rail funding.

Litigation

Three lawsuits have been filed against the Authority, of which two are pending:

Resolved

- *Howard Jarvis Taxpayers Association v. HSRA*, Sacramento County Superior Court. This suit was based on the requirement in AB 3034 that a business plan be prepared by September 1, 2008. The case was dismissed after the Authority obtained a favorable ruling on petitioner's request for an accelerated briefing schedule. Litigation Counsel: George Spanos.

Pending

- *Town of Atherton et al. v. HSRA*, Sacramento County Superior Court. This is a CEQA challenge to the Authority's Program EIR for the Bay Area to Central Valley portion of the system. Litigation Counsel: Danae Aitchison, lead counsel, assisted primarily by Christine Sproul, and on non-CEQA issues by George Spanos.
- *Peterson et al. v. HSRA and PCJPB* (Caltrain), San Mateo County Superior Court. This case challenges the Authority's and Caltrain's work on the Peninsula Corridor on the basis that the work cannot go forward without the consent of Union Pacific Railroad. The Railroad is not a party to the case. Litigation Counsel: George Spanos.

Cost of Legal Services Provided by the Attorney General's Office

The Authority is billed by the Attorney General's office on an hourly basis for the work done by deputy attorneys general. The hourly rate is \$170. This figure includes all overhead. Although the same rate would apply for services provided by less experienced deputy attorneys general, the attorneys providing legal services to the Authority are among the most experienced members of the Attorney General's office. For more information on the background and experience of each of these attorneys, see below.

Curriculum Vitae – Pertinent Experience

George Spanos: Deputy Attorney General IV.¹ Admitted to practice 1975. Has served as a legislative advocate for the Attorney General and has worked in the Legislature. Research Attorney for the Court of Appeal. Extensive litigation practice before all levels of courts in both California and in the federal judicial system, including jury trials and numerous court trials and appellate cases, including criminal cases, cases involving the Public Records Act, Open Meeting Act, and conflict of interest laws, as well as cases involving real property, environmental law, and excess highway property. 18 years experience dealing with transportation-related legal issues.

Christine Sproul: Deputy Attorney General IV. Admitted to practice 1975. Work history: Assistant Secretary for Legal Affairs at the Resources Agency, concentrating on CEQA legislation and guidelines, including advising the Agency and its constituent departments, boards, and commissions with regard to compliance with CEQA. Previously served as legal counsel to the Department of Forestry and Fire Protection, the California Air Resources Board, and the State Water Resources Control Board.

Danae Aitchison: Deputy Attorney General III. Admitted to practice 1995. Work history: 1995-1998 Remy, Thomas and Moose (associate, representing public and private clients in CEQA and California land use litigation), 1998-present, Office of the Attorney General, Land Law Section. Extensive litigation practice focused on environmental and land use law. Successfully defended the CALFED programmatic environmental impact report at both the trial court and appellate court levels in *In re Bay Delta Programmatic Environmental Impact Report Cases* (2008) 43 Cal.3d 1143.

Stepan Haytayan: Deputy Attorney General III. Admitted to practice 1999. Work history: 1999-2002 Orrick, Herrington & Sutcliffe LLP (associate, public finance department), 2002-2007 Sidley Austin LLP (counsel, public finance department), 2007-present Office of the Attorney General, public finance unit, Government Law Section.) Extensive experience in public finance, representing bond issuers (as bond counsel and disclosure counsel), underwriters/purchasers, and credit enhancers in both public and private offerings. Representative transactions include bond offerings by various State

¹ Deputy Attorney General IV is the highest classification for line deputy attorneys.

issuers (including the Treasurer, the Department of Water Resources and California State University), the Bay Area Toll Authority, the Metropolitan Water District of Southern California, the Foothill/Eastern Transportation Corridor Agency, the San Joaquin Hills Transportation Corridor Agency, the City of Los Angeles, the Los Angeles Unified School District and the County of San Diego.

Rich Williams: Deputy Attorney IV. Admitted to practice 1972. Retired from Caltrans after serving from 2001-2007 as Assistant Chief Counsel. Work history: As Assistant Chief Counsel, had statewide responsibility for coordinating real property matters. Developed and presented training workshops for attorneys regarding eminent domain and inverse condemnation litigation and proper use of appraisal methodology and testimony and created and presented eminent domain seminars for right of way agents in each of Caltrans' districts. Advised Caltrans with regard to land acquisition, airspace leasing, relocation assistance, excess land, cooperative agreements, and freeway agreements, and drafted Caltrans' standard air space leases for commercial and industrial use of state air space. Advised the California Law Revision Commission regarding the enactment of significant amendments to the Eminent Domain Law in 2001. Has handled litigation at all levels of the court system in cases involving, among other things, eminent domain, inverse condemnation, real property, hazardous waste, and property damage.



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October 29, 2009

Mr. Mehdi Morshed
Executive Director
California High-Speed Rail Authority
915 L Street, Suite 1425
Sacramento, CA 95814

RE: Organizational Assessment Priorities and Hiring Options

Dear Mr. Morshed:

KPMG LLP (KPMG) has completed its organizational assessment of the California High-Speed Rail Authority (Authority) and has submitted its draft report to you under separate cover for your review and comments.

Attached for your information and discussion at the November 4, 2009, Authority Board Executive/Administrative Committee meeting is KPMG's assessment of the key executive-level positions identified in our draft report which we believe require immediate action, and the available options that the Authority has to fill those positions, once authorized.

If you have any questions regarding the attached document, please contact Daryll Tsujihara at (916) 554-1677, Barbara Lloyd at (213) 955-8617, or myself at (916) 554-1158.

Sincerely,
KPMG LLP

Robert T. O'Neill
Principal

Attachment

Key Position Priorities And Hiring Options

Key executive staff positions should be high priority for immediate action

- Action on the following positions should begin as soon as practical
 - **Chief Executive Officer** (Exempt – suggested refinement to current position)
 - **Chief of Staff** (CEA – suggested refinement to current position)
 - **Internal Auditor** (CEA or Permanent Civil Service – suggested new position)
 - **General Counsel** (CEA or Permanent Civil Service – suggested new position)
 - **Chief, Project Controls & Risk Management** (CEA or Permanent Civil Service – suggested new position)
 - **Chief Program Manager** (Exempt – suggested new position)
 - **Chief Financial Officer** (Exempt – suggested new position)
 - **Chief, External Affairs** (Exempt – suggested new position)
 - **Regional Directors** – (Exempt or CEA – suggested new positions)

Note: We have been informed by the Deputy Attorney General assigned to the Authority that legislation will be required in order for the Authority to be able to hire in-house legal counsel

- Other position responsibilities can be met with existing staff or with temporary/loaned staff for an interim period. The method of filling most of these positions will most likely be through CEA or permanent civil service. However, if the Authority believes that quality candidates cannot be found within state service for some of them, consideration should be given to requesting and utilizing additional exempt entitlements for those positions.
 - Director, Planning and Environment
 - Director, Engineering and Programming
 - Director, Finance
 - Director, Business and Procurement Services
 - Director, Legislation
 - Director, Public Affairs/PIO
- Positions below the leadership level will need to be assessed for workload to determine appropriate staffing levels
 - Some functions may require additional personnel within the 2010-11 budget cycle
- Authority staff has prepared update budget request
 - Understood to be in line with prior correspondence to Senate Committee on Budget and Fiscal Review (May 12, 2009)

- New recommended positions would not be reflected in current budget change proposal, although positions could be reallocated to meet new needs, as available
- Authority should confer with appropriate legislative and administration / control agency personnel regarding options for near-term action
 - Can the “release” of the remainder of the Authority’s 2009-10 budget also include action to increase positions (and funding, if necessary)?
 - Or, will position authorizations and funding need to be pursued through a separate appropriations bill (2/3 vote; urgency)?

There are few options for creating and filling key executive-level positions

- Existing civil service classifications
 - Most lists for existing classification at the levels needed are “promotional” and contain only names of current state employees
 - Must hire from existing list or administer a new examination, which may be time consuming
 - Timeframe to hire is short, if from existing list
 - Classification descriptions and minimum qualifications are set and cannot be altered without significant time and effort
 - Little salary flexibility; existing salary range is set and may not be conducive to recruit the quality of candidates desired
- New civil service classifications
 - Permits hires to come from outside of state service
 - Individual appointed would gain permanent civil service status upon completion of a one-year probationary period
 - Upon creation of the classification, salary can be negotiated with the Department of Personnel Administration (DPA)
 - DPA and the State Personnel Board (SPB) are reluctant to create new classifications
 - The process to create a new civil service class could take six months or more
- Career Executive Assignments
 - Hires limited to current state employees with permanent civil service status (no outside hires)
 - Some salary flexibility within existing salary bands
 - Hiring process is relatively quick

- Individual can be separated with 20-days notice (no permanent status in the position)
- Exempt Entitlements
 - Maximum recruitment and hiring flexibility; candidates can come from within or outside of state service
 - Maximum salary flexibility (must be approved by the Governor's Office and DPA)
 - Appointees serve "at will" and gain no permanent status
 - California State Constitution provides the Authority Board with one exempt entitlement (currently filled by the Executive Director)

Although the use of exempt entitlements appears to best meet the needs of the Authority, barriers exist

- Exempt appointments to proposed new executive-level positions likely will require legislative and Administration support
- It does not appear that the Governor currently has the ability to provide the Authority with additional exempt entitlements
- It appears that the only means to obtain additional exempt entitlements is through legislation, which would designate the Governor's appointment authority for a specific number of appointments or to specific positions/functions within the Authority
 - These additional exempt positions, although "belonging to the Authority" under the legislation, still would need to satisfy the Constitution's requirement that the appointments to fill the additional exempt positions be made by the Governor (this has been discussed with DPA, which is in agreement, that this would work and has precedent)
 - The statute may need to specify the Authority's role in identifying and forwarding one or more candidates for each exempt position to the Governor for appointment consideration and approval
 - The Authority may wish to include language in the statute that exempts the salary setting for some or all of the new exempt entitlements from DPA approval (similar to California Housing and Finance Agency legislation passed in 2006); this legislation could also include a provision which, for expediency purposes, permit the Governor to establish the initial exempt salaries
 - The Authority may also want to include language in the legislation which will permit it to hire in house legal counsel, since currently, there is no authorizing statute which provides for this